

This letter concerns the rolling stock exemption. s See 86 Ill. Adm. Code 130.340. (This is a GIL).

April 29, 2008

Dear Xxxxx:

This letter is in response to your letter dated June 26, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing at the request of our client, who is seeking advice pertaining to the Illinois Sales and Use Tax in the form of a [sic] Informal General Information Letter.

Issues:

1. Whether repairs, which include labor and parts, made to commercial airline aircraft galley carts by an FAA approved repair station constitute aircraft service and maintenance of aircraft components which are an integral part of commercial aircraft under Section 151.328(e) and thus exempt.
2. Whether loading devices (referred to as 'ULD's or cargo containers) which are loaded onto commercial aircraft are considered to be 'rolling stock' and thus exempt from sales and use tax under Section 130.340. Also are repairs to those cargo containers exempt under Section 151.328(e).
3. Commercial Airlines referred to in this General Information letter is limited to National and International common carrier aircrafts.

Aircraft Galley Carts

Facts:

The aircraft is not permitted to fly unless galley carts are installed on the aircraft, serviceable and airworthy.

Unlike ground equipment, all aspects of these repairs are governed by the same FAA regulations applied to other aircraft components.

When the manufacturer releases the plane, the certificate of airworthiness includes a list of minimum approved equipment. This list includes galley carts, which must be fully operational and inserted in designated slots before flight approval.

When commercial aircraft design includes galley carts, the equipment **must be on-board** in accordance with FAA regulations even if the aircraft does not serve food and are secured with the redundant latch systems.

Galley carts have engineer designed configuration drawings that identify each galley cart by number and location.

Section 151.328(e) states that tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a person described by Subsection (a)(1) or (a)(2), **or that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in the aircraft, is exempted from the taxes imposed by this chapter.**

Under federal aviation law, galley carts and ULDs are integral components of an aircraft because they must be installed in an aircraft before the aircraft is certified as airworthy by the Federal Aviation Administration. Like other aircraft components (e.g. engines), galley carts and ULDs must be serviced by an FAA regulated and certified maintenance station.

State courts have held that components are 'integral parts of an aircraft' for purposes of the use tax exemption for 'aircraft' if the components must be installed on an aircraft before the FAA will issue a certificate of airworthiness. In the words of the court:

All of the articles in dispute herein at the time were an integral part of the aircraft. Without any of them a Certificate of Airworthiness could not have been obtained from the C.A.A. (predecessor to FAA) for the plane.

...they were integral parts of an 'aircraft' just as much as the engines and frames of the plane...

The common sense construction of our statutes is that, in exempting the 'aircraft' from the use tax, the statutes exempted all the essential equipment required by the federal regulations as an integral part of the aircraft.

Based on the above facts we feel that the galley carts are **necessary** for the normal operations of the aircraft and thus should be exempted from the sales and use tax.

Your comments on this matter would be greatly appreciated.

Cargo Containers

Facts:

Cargo containers are fitted into locking mechanisms on the aircraft.

The International Air Transportation Association developed standards containing specifications for containers.

FAA regulations require that cargo containers must be certified as airworthy before being loaded onto an aircraft. The aircraft will not be permitted to fly if an FAA inspector determines that a cargo container is not airworthy.

The aircraft carries persons or commodities in interstate commerce on a regular and frequent basis.

The cargo containers carry bulk freight, luggage and mail.

The cargo containers are dedicated to a particular qualifying carrier and participate directly in the transportation process.

Additionally, according to the FAA Advisory Circular for Air Cargo Operations, page 38:

The cargo restraint system installed in an airplane is a critical design feature. The cargo design restraint system is the primary means of insuring the cargo loads introduced into the airplane structure are properly distributed, and all items of mass are restrained from movement or from damaging critical airplane systems when subjected to flight, landing, and ground operational loads, and from the loads resulting from emergency landing conditions. The cargo restraint system may include barriers, ULD's, nets, straps, chains, tie-downs and floor locks.

Based on the above facts we are of the opinion that the cargo containers meet the exemption requirements to be classified as rolling stock and thus the repairs should be exempted from the Illinois sales and use tax under Section 130.340 and 151.328(e).

Your comments on the above would be greatly appreciated. If any further information is required, please do not hesitate to contact us.

DEPARTMENT'S RESPONSE

We are unable to respond to your inquiry regarding "Section 151.328(e)" as that section does not exist in Illinois Statutory Law governing taxes or in the Department's Administrative Rules. We hope, however, the following general information will assist you.

For information regarding the rolling stock exemption, we refer you to the Department's regulation at 86 Ill. Adm. Code 130.340. A similar exemption is provided for tangible personal property transferred incident to sales of service involving rolling stock. See 86 Ill. Adm. Code 140.201(f)(4) and (f)(5).

In order to claim the rolling stock exemption for an aircraft, the carrier must be able to document that it has authority to operate as an interstate carrier for hire and show that it does in fact so operate on a regular and frequent basis. Absent the ability to document that the carrier has authority to operate as an interstate carrier for hire and operate the aircraft in a manner that qualifies for the exemption, no rolling stock exemption is available.

In order to claim the exemption, retailers and servicemen must obtain a properly executed exemption certification from the purchaser and retain this certification in their books and records. Exemption certifications must comply with the requirements of subsection (e) of Section 130.340. Form RUT-7, Rolling Stock Certification, which can be found on the Department's website, may be used to provide the required certification to document the rolling stock exemption. A carrier must be recognized as an interstate carrier for hire by the Federal Highway Authority, which assumed this authority from the Interstate Commerce Commission, or a carrier must certify that it is a type of

interstate carrier for hire that is not required by law to be so recognized as an interstate carrier for hire by the Federal Highway Authority. If the carrier is a type that is subject to regulation by some other Federal Government regulatory agency, the carrier must include its registration number from such other Federal Government regulatory agency in the certification claiming the benefit of the rolling stock exemption.

Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, rather how the item is used by a qualifying interstate carrier. Not all items of tangible personal property used by an interstate carrier for hire qualify for the rolling stock exemption. The exemption is applicable to equipment or parts only if they become a component part of qualifying rolling stock and to equipment which, though not physically incorporated, is dedicated to a particular qualifying item or items of rolling stock and participates directly in the transportation process. For example, a hand cart used by a trucking company that is an interstate carrier for hire, and the hand cart travels with a particular qualifying tractor or trailer and is used for loading and unloading cargo carried by that tractor or trailer.

Thus, oil, grease, parts, belts, lights, transmission fluids, paint, filters, hoses, and seats generally qualify for the exemption since these products become a physical component part of the qualifying rolling stock. Fuel, flares, cleaners, paint supplies, and tools do not generally qualify for the exemption because the regulation provides that "the exemption does not apply to fuel nor jacks or flares or other items that are used by interstate carriers for hire in servicing the transportation vehicles, but that do not become a part of such vehicles, and that do not participate directly in some way in the transportation process." See Section 130.340(b).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
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